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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAMES WECKER,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B213050

(Los Angeles County  
Super. Ct. No. BS113328)

APPEAL from a judgment of the Superior Court of Los Angeles County,

Helen I. Bendix, Judge. Affirmed.

Jeffer, Mangels, Butler & Marmaro, Joel D. Deutsch, Matthew D. Hinks and Benjamin M. Reznik for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Jeri L. Burge, Assistant City Attorney, and Michael J. Bostrom, Deputy City Attorney, for Defendants and Respondents.

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James Wecker appeals the denial of his petition for a writ of mandate against the City of Los Angeles (city) and the city’s Central Area Planning Commission (Planning Commission). He challenges the city’s denial of his application for a parcel map to subdivide hillside property. We conclude that he has shown no prejudicial abuse of discretion by the city and affirm the judgment.

***FACTUAL AND PROCEDURAL BACKGROUND***

1. *Factual Background*

Wecker owns a parcel of real property on a hillside located at 9100 Crescent Drive in Hollywood. The parcel has an area of approximately 108,400 square feet and is zoned RE15-1-H. The property is governed by the Hollywood Community Plan, which is part of the city’s general plan.

The community plan sets forth several objectives, including the following in hillside residential areas:

“a. Minimize grading so as to retain the natural terrain and ecological balance.

“b. Provide a standard of land use intensity and population density which will be compatible with street capacity, public service facilities and utilities, and topography and in coordination with development in the remainder of the City.”

The community plan map indicates that the property is within an area designated by the residential density category Very Low II. The community plan also states, “It is the intent of this Plan that all natural slopes generally in excess of 15% be limited to the minimum density range.” Los Angeles Municipal Code section 17.50, subdivision E, as

amended by the Slope Density Ordinance (No. 162,144), imposed additional restrictions on certain hillside properties. According to Wecker, a senior city planner in the city's Department of City Planning advised him that the parcel was not subject to the Slope Density Ordinance.

Wecker submitted a preliminary parcel map to the city's planning department for approval in April 2006. He proposed to subdivide the property into three lots for the construction of single-family homes. He requested the vacation of a 12-foot width of parts of the current 40-foot public right-of-way dedication along Crescent Drive for merger with his property.

The city's Deputy Advisory Agency conducted a public hearing in April 2007 and denied the parcel map application in September 2007. It found that (1) the average natural slope of the property was greater than 75%, and the proposed subdivision exceeded the density limitation under the Slope Density Ordinance; (2) the proposal was incompatible with the capacity and topography of Crescent Drive, a substandard local hillside street, and inconsistent with the community plan objective to provide a standard of land use intensity compatible with street capacity; (3) the necessary roadway improvements would require extensive grading and "extreme engineering and manipulation of the hillside" that would be inconsistent with the community plan objective to "[m]inimize grading so as to retain the natural terrain and ecological balance" in hillside areas; and (4) the construction of homes on the site "will require unattractive design solutions such as massive retaining walls, artificially flattened and widened ridges and obtrusively reinforced structures which conflict with the natural

look of the surrounding land forms,” and such construction would not comply with the limitations of the Retaining Walls in Hillside Areas Ordinance (No. 176445). The Deputy Advisory Agency also noted that the city’s Bureau of Engineering in a memorandum dated May 9, 2007, had recommended denying the requested right-of-way vacation and stated that proposed lot C lacked the required street frontage.

Wecker appealed the decision to the Planning Commission. The Planning Commission conducted a public hearing in November 2007. The Deputy Advisory Agency appeared and summarized the decision. The Deputy Advisory Agency noted that Wecker’s separate application for a lot line adjustment had been approved and that lot C therefore would have adequate street frontage and withdrew that concern as a reason for denying the application.<sup>1</sup> The commissioners’ questions and comments at the hearing focused on whether the Slope Density Ordinance applied. The commissioners voted 2-2 on the appeal.

The Planning Commission conducted a second public hearing in December 2007 with its fifth member present. Speaking at the hearing, the Deputy Advisory Agency stated that the Slope Density Ordinance was not the only basis for the decision and that the proposed subdivision was inconsistent with the community plan and zoning code. At the conclusion of the hearing, the commissioner who had been absent from the prior hearing stated her conclusion that the Slope Density Ordinance applied, and stated that

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<sup>1</sup> Wecker also applied for and obtained a variance allowing him to construct a single-family dwelling on lot C conditioned on his improving Crescent Drive to a 20-foot width for the full length of the property, rather than all the way to boundary of the hillside area as would otherwise be required under the municipal code.

she would deny the appeal. The commissioners voted 3-2 to deny the appeal and sustain the decision by the Deputy Advisory Agency.

2. *Trial Court Proceedings*

Wecker filed a combined petition for writ of mandate and complaint against the city and the Planning Commission in February 2008, alleging that the denial of his subdivision application was contrary to law and that the city's decision was not supported by substantial evidence. He seeks a writ of mandate directing the city to approve the parcel map. He also alleges counts for declaratory relief, inverse condemnation, and civil rights violations.

After a hearing on the merits of the count seeking a writ of mandate, the trial court denied the petition. Wecker then voluntarily dismissed the remaining counts without prejudice. The court entered a judgment denying the petition for writ of mandate. Wecker timely appealed the judgment.

***CONTENTIONS***

Wecker contends (1) the property is not subject to the Slope Density Ordinance; (2) the application of the Slope Density Ordinance was the sole basis for the city's decision; (3) the proposed subdivision is consistent with the community plan's density limitation and the community plan objectives; and (4) other findings by the Deputy Advisory Agency are not supported by the evidence.

## *DISCUSSION*

### 1. *Slope Density Ordinance*

The city enacted Ordinance No. 162,144, known as the Slope Density Ordinance, in April 1987.<sup>2</sup> The ordinance added a new subsection E to section 17.50 of the Los Angeles Municipal Code, stating in relevant part:

“In Hillside Areas as defined in Chapter IX of the Los Angeles Municipal Code which are designated in the Minimum Density housing category by the applicable element of the General Plan adopted by the City Council, the dwelling unit density shall not exceed that allowed by the following formula:

$$D = \frac{50 - S}{35}$$

Where: D = the maximum number of dwelling units per gross acre allowable, and  
S = the average natural slope of the land in percent”

The city amended Los Angeles Municipal Code section 17.50, subdivision E in September 2007. Subdivision E now states in relevant part:

“In Hillside Areas, as defined in Chapter 1 of the Los Angeles Municipal Code, which are designated in the Minimum Density housing category by the applicable element of the General Plan adopted by the City Council, the dwelling unit density shall not exceed that allowed by the following formula:

$$D = \frac{50 - S}{35}$$

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<sup>2</sup> We judicially notice the ordinance. (Evid. Code, § 452, subd. (b).)

Where: D = the maximum number of dwelling units per gross acre allowable, and  
S = the average natural slope of the land in percent.”<sup>3</sup>

The parties agree that the property is within a “Hillside Area,” but dispute whether it is “designated in the Minimum Density housing category” by the community plan so as to make it subject to the prescribed density formula. The Deputy Advisory Agency concluded and the city maintains that the density is “limited to the minimum density range” under the terms of the community plan because the natural slope of the property exceeds 15 percent.<sup>4</sup> The city argues that the property therefore is “designated in the Minimum Density housing category” within the meaning of the Slope Density Ordinance and is subject to the prescribed density formula. In contrast, Wecker argues that the property is designated in the Very Low II housing category under the terms of the community plan. Wecker argues that even if the property is “limited to the minimum density range” under the terms of the community plan, it is not “designated in the Minimum Density housing category” within the meaning of the Slope Density Ordinance. We need not decide this question because we affirm the judgment on another ground.

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<sup>3</sup> The parties cite current section 17.50, subdivision E of the Los Angeles Municipal Code rather than the former version in effect at the time of both Wecker’s completed application and the decision by the Deputy Advisory Agency. The parties do not discuss the significance, if any, of the amendments to subdivision E. (See Gov. Code, § 66474.2.)

<sup>4</sup> Again, the community plan states, “It is the intent of this Plan that all natural slopes generally in excess of 15% be limited to the minimum density range.”

2. *Wecker Has Not Shown that the Slope Density Ordinance Was the Sole Basis for the City's Decision*

The Deputy Advisory Agency made several findings in its written decision. The Planning Commission sustained that decision in its entirety and denied the appeal.<sup>5</sup> The fact that the commissioners' questions and comments focused on the Slope Density Ordinance does not show that the Slope Density Ordinance was the sole basis for the city's decision. Instead, we presume that the decision was based on the findings stated, absent compelling evidence to the contrary and extraordinary circumstances. If any one of the city's findings supports the city's decision and is supported by substantial evidence, there was no prejudicial abuse of discretion. (*Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1215; see Code Civ. Proc., § 1094.5, subd. (b).)

3. *Substantial Evidence Supports the City's Inconsistency Findings*

A subdivision must be consistent with applicable general and specific plans. (Gov. Code, §§ 66473.5, 66474.61.) A subdivision is consistent with an adopted plan only if "the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan." (*Id.*, § 66473.5.)

Consistency does not require full compliance with all general and specific plan policies. Rather, "[o]nce a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.]" (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 (*Sequoyah*

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<sup>5</sup> The Deputy Advisory Agency had modified its decision by withdrawing its concern regarding adequate street frontage, as we have noted.

*Hills*.) A local agency has unique competence to interpret the policies of its own general plan and weigh competing interests in determining how to apply those policies. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142; *Sequoyah Hills, supra*, at p. 719.) “It is, emphatically, *not* the role of the courts to micromanage these development decisions.” (*Sequoyah Hills, supra*, at p. 719.)

We review the city’s finding that the proposed subdivision is inconsistent with the community plan under the abuse of discretion standard. (Code Civ. Proc., § 1094.5, subd. (b); *Sequoyah Hills, supra*, 23 Cal.App.4th at p. 717.) To prevail on his contention that the proposal is consistent with the community plan, Wecker must show that there is no substantial evidence to support the city’s finding. (Code Civ. Proc., § 1094.5, subd. (b); *Sequoyah Hills, supra*, at p. 717.) In other words, he must show that no reasonable decision maker could conclude that the project is inconsistent with the plan objectives. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 243.)

The Deputy Advisory Agency found that the proposed subdivision was incompatible with the capacity and topography of Crescent Drive and inconsistent with the community plan objective to provide a standard of land use intensity compatible with street capacity. It also found that the necessary street improvements would require extensive grading and “extreme engineering and manipulation of the hillside” that would be inconsistent with the community plan objective to “[m]inimize grading so as to retain the natural terrain and ecological balance’ ” in hillside areas and that the

property was not suitable for this type of development. These findings amount to a finding that the proposal is inconsistent with the community plan.

The Planning Department staff reported that Crescent Drive was improved to widths of only 8 to 12 feet adjacent to the property, with no curbs, gutters, or sidewalks. The staff reported that the city's standard street dimensions for a local hillside street required a 44-foot dedication with 36 feet of roadway and stated that the proposal could not satisfy those standards, particularly with the requested 12-foot vacation.<sup>6</sup> Residents complained that Crescent Drive and connecting roads were insufficient for the existing traffic levels. The staff report noted that the preliminary parcel map depicted the proposed construction of two retaining walls to support the improvement of Crescent Drive to a width of 20 feet along the property, and stated that further widening of the street and development of the steep hillside property would require additional retaining walls and extensive grading.

The Deputy Advisory Agency and Planning Commission reasonably concluded based on this and other evidence that the proposed subdivision would increase the intensity of land use and exacerbate the insufficiency of the street capacity, that the street improvements necessary to relieve those conditions would require extensive grading, and that the proposal therefore was inconsistent with the stated community plan objectives and with the community plan as a whole. We conclude that substantial evidence supports these findings and that Wecker has shown no prejudicial abuse of

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<sup>6</sup> The community plan designates Crescent Drive a local hillside street.

discretion. In light of our conclusion, we need not decide whether the Slope Density Ordinance applies or review the other findings.

***DISPOSITION***

The judgment is affirmed. The city and Planning Commission are entitled to recover their costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.